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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/863,113	05/27/1997	ANDRE M. GOINEAU	1974	4347

7590 07/16/2004

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EXAMINER

WORRELL JR, LARRY D

ART UNIT	PAPER NUMBER
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3765

23

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/863,113

Applicant(s)

GOINEAU ET AL.

Examiner

Danny Worrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/24/03</u> . | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Request for Continued Examination

In view of the granting of the petition mailed 4/26/04, an RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added material that is not described in the specification as originally filed is as follows: As recited in claims 11 and 17, the negative limitation "untextured" does not have support in the application as originally filed.

Claims 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "low molecular weight" in claims 11 and 17 is a relative phrase that renders the claim indefinite. The phrase "low molecular weight" is not defined by the claim, the

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specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goineau

(5172459) in view of "Textiles for Residential and Commercial Interiors".

Goineau (5172459) teaches the invention as claimed including providing a bobbin of polyester POY multi-filament synthetic yarn (20, 26, 24), supplying said yarn to a heater (32), drawing said yarn in a draw zone with a draw ratio in the range of 1.8-2.3(column 2, lines 24-27) as it passes over the heater to fully orient the yarn and taking up the fully oriented yarn (42).

However, Goineau (5172459) teaches a textured yarn via air texturing instead of an untextured yarn. As provided by applicant in the IDS of 9/24/03, "Textiles for Residential and Commercial interiors" notes that texturing may decrease strength in filaments. It would have been obvious at the time the invention was made to one of ordinary skill in the art to provide the oriented yarn as an untextured fully oriented yarn rather than an air textured yarn in order to avoid any possibility of reducing strength which may occur with texturing as indicated on page 34, column 1, line 3 of "Textiles for Residential and Commercial interiors". Re claim 5, note the draw-relaxing zone between rollers 34 and 41. Concerning the indefinite terminology "low molecular weight" the standard DUPONT polyester of Goineau has a low molecular weight when compared to other higher molecular weight polymers such as KEVLAR, NOMEX, VECTRA, etc.

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Claims 12-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goineau (5172459) in view of "Textiles for Residential and Commercial interiors" and further in view of Gorrafa.

As indicated in the rejection to claim 11 above, Goineau (5172459) teaches the invention substantially as claimed including providing a 34 filament, 150 denier POY yarn. However Goineau (5172459) discloses a heater draw temperature of 140°C instead of about 210°C as claimed. Gorrafa teaches a drawing process for polyester yarns in which the temperature is 210°C as shown in Table 1 of Gorrafa. It would have been obvious at the time the invention was made to one of ordinary skill in the art to which the invention pertains to provide the heating of the yarn of Goineau (5172459) to about 210°C in order to bring about the optimal fully drawn yarn characteristics as shown by Gorrafa. Additionally, it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Re claim 12 and the pre-tensioning, note in the draw block of Goineau (5172459) the initial drawing provides a pre-tension before the second draw section. See column 2, lines 20-27. Re claim 17 and the yarn size of 255 denier, it would have been obvious at the time the invention was made to one of ordinary skill in the art to which the invention pertains to provide the yarn size as 255 denier since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Concerning the specific draw ratio of 2.093, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the 1.9 draw ratio of Goineau (5172459) as 2.093, since it has been held that discovering an optimum value of a

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result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Clearly draw ratio is a result effective variable as shown by example throughout the disclosure of Gorrafa. Re claim 14 and the specific pretensioning draw ratio of 1.01, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the 1.01 draw ratio in the pretension drawing of Goineau (5172459), since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

Applicant's arguments filed 9/24/03 have been fully considered but they are not persuasive. On page 6 of the remarks applicant contends that the term "untextured" is fully supported by the originally filed specification since the Board of Appeals analysis explicitly distinguished the untextured yarn of the present invention from the textured yarn described in the Goineau patent. The examiner disagrees. Initially it should be noted that the question of whether the term "untextured" finds support in the originally filed specification was never presented to or addressed by the Board in the decision rendered on 9/25/01. Additionally, the term "untextured" was never even set forth as a limitation in applicant's previously claimed invention. The analysis of "textured/untextured" by the Board was directed towards an obviousness question regarding the new matter limitation "without further processing". The originally filed specification does not expressly or inherently contain disclosure of an "untextured" yarn.


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On page 6, lines 12-18, applicant argues that "industrial yarn" has a specific meaning of *high tenacity* as shown by the definition from "Compilation of ASTM Standard definition. The examiner disagrees with this analysis. The definition referenced by applicant states "a yarn composed of continuous filaments, *usually* of high breaking tenacity, produced with or without twist, and intended for applications in which functional properties are of primary importance". Clearly the yarn Goineau meets this definition since high breaking tenacity is not required for industrial yarns.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Worrell whose telephone number is 703/308-0889. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703/305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DANNY WORRELL
PRIMARY EXAMINER